

1 **WO**

2  
3  
4  
5  
6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
8

9 Grand Canyon West Ranch, LLC, an) No. CV 03-2496-PHX-EHC  
Arizona limited liability company, )

10 Plaintiff, )

11 vs. )

12 )  
13 Gale Norton, in her official capacity as the )  
Secretary of the United States Department )  
14 of the Interior; Kathleen Clarke, in her )  
official capacity as the Director of the )  
15 Bureau of Land Management; County of )  
Mohave, )

16 Defendants. )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

**ORDER**

20 Pending before the Court is the Federal<sup>1</sup> Defendants' Motion to Dismiss on the basis  
21 of sovereign immunity. [Dkt. 58]. The Motion is fully briefed.

22 Plaintiff owns real property in Mohave County that is used for cattle ranching and  
23 hosting tourists. Based on Deeds of Dedication, Mohave County has established Diamond  
24

25  
26  
27 <sup>1</sup> The Federal Defendants are Kathleen Clarke and Gale Norton, who is no longer  
28 Secretary of the Interior. Because Gale Norton is sued in her official capacity, P. Lynn  
Scarlett, acting Secretary of the Interior, will be substituted for Gale Norton. See Fed. R.  
Civ. P. 25(d)(1) (providing automatic substitution of public officer sued in official capacity).

1 Bar Road on Plaintiff's property.<sup>2</sup> The Bureau of Land Management has a roadway  
2 easement across Plaintiff's property. Mohave County and the Bureau of Land Management  
3 have allegedly planned to expand the use of Diamond Bar Road as a route servicing Grand  
4 Canyon tours and casino gambling hosted by the Hualapai Nation.

5 Absent a waiver, the United States is immune from suit. Alaska v. Babbitt, 38 F.3d  
6 1068, 1072 (9th Cir. 1994). The United States waived sovereign immunity for certain  
7 disputes involving real property in the Quiet Title Act. 28 U.S.C. § 2409a. To find a waiver  
8 under the Quiet Title Act there must be "a disputed title to real property in which the  
9 United States claims an interest." § 2409a(a). The parties agree that Plaintiff has alleged the  
10 United States claims an interest in the property at issue. [Dkts. 59, p. 4; 74, p. 2].

11 The issue is whether the United States disputes title to Plaintiff's property. A  
12 dispute concerning the scope of an easement can constitute a title dispute under §  
13 2409a(a). Kootenai Canyon Ranch, Inc. v. United States Forest Serv., 338 F. Supp. 2d 1129,  
14 1133 (D. Mont. 2004) (sovereign immunity waived where "the government has an easement  
15 in land for which the Plaintiff owns the servient estate, and the parties dispute the scope  
16 of that easement").

17 Plaintiff alleges that the Bureau of Land Management's easement for "the use of  
18 Diamond Bar Road was limited to providing a means of access to BLM lands located in the  
19 area surrounding" Plaintiff's property. [Dkt. 5, p. 4]. The Bureau of Land Management  
20 allegedly "claims it has the right to allow commercial traffic on Diamond Bar Road pursuant  
21 to the BLM easement." [Dkt. 5, p. 5]. Plaintiff alleges that the United States Department of  
22 the Interior prepared an environmental impact statement analyzing "realigning of  
23 Diamond Bar Road in certain places and widening the current dirt road and adding a hard  
24 surface pavement converting it into a fully paved highway." [Dkt. 5, p. 6]. Plaintiff further  
25

---

26  
27 <sup>2</sup> Mohave County's right to Diamond Bar Road under the Deeds of Dedication has  
28 been resolved. The Court granted Mohave County's Motion for Summary Judgment on  
Plaintiff's claim that the Deeds of Dedication had not been accepted. [Dkt. 54].

1 alleges that "there are also issues of failure of consideration, intent, and consummation and  
2 procedural irregularities of the BLM easement which may render it unenforceable." [Dkt.  
3 5, p. 7]. Plaintiff has alleged a dispute concerning the scope of the easement and whether  
4 it is enforceable. That is a dispute to title allowing the application of the Quiet Title Act's  
5 waiver of the United States' sovereign immunity.

6 Accordingly,

7 **IT IS ORDERED** that the Federal Defendants' Motion to Dismiss [dkt. 58] is  
8 **DENIED**.

9 **IT IS FURTHER ORDERED** that the Federal Defendants' Request for Oral  
10 Argument on Pending Motion to Dismiss [dkt. 85] is **DENIED**.

11 **IT IS FURTHER ORDERED** that P. Lynn Scarlett, in her official capacity as the  
12 Acting Secretary of the United States Department of the Interior, is substituted for Gale  
13 Norton.

14 DATED this 26th day of April, 2006.

15  
16 

17 Earl H. Carroll  
18 United States District Judge  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28